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RESERVATIONS TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Report by the Secretariat

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I. INTRODUCTION

1. At its fifteenth session held in January 1996, the Committee on the Elimination of Discrimination against Women requested, in connection with its consideration of ways and means of expediting the work of the Committee, that the Secretariat provide it with information to facilitate discussion at its sixteenth session of reservations to the Convention on the Elimination of All Forms of Discrimination against Women. The Committee specifically requested a review of "what United Nations conferences have said about reservations to the Convention" and "of comments made by women's human rights non-governmental organizations concerning reservations". It also requested "a qualitative comparison of reservations to the Convention with reservations to those of other human treaties" and "an analysis of States parties' reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law".[1]

2. The present report seeks to provide the Committee with the information it requested. To facilitate discussion, the first part describes the pattern of reservations and declarations made by States parties to the Convention on ratification or accession. The report then surveys the response of the Committee, States parties to the Convention, United Nations conferences and others, including non-governmental organizations and scholars, to these reservations and declarations. The final part of the report describes measures that have been taken in other contexts to address reservations and suggests options available to the Committee as it seeks to reduce and, ultimately, eliminate reservations. The report provides a comparison of the reservations and declarations to the Convention with reservations and declarations entered to other human rights treaties which can be used by the Committee and others in dialogue with States parties.

II. THE PATTERN OF RESERVATIONS AND DECLARATIONS TO THE CONVENTION

3. The Vienna Convention on the Law of Treaties, 1969, defines a reservation as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State".[2] Declarations which offer a State's understanding of a provision sometimes seek to exclude or modify the legal effects of the treaty for that State and are thus properly construed as reservations.[3]

4. As at 8 November 1996, 154 States had ratified, acceded or succeeded to the Convention. Of these, 49 had entered declarations or reservations, many to more than one article. Some of these reservations are essentially procedural and relate to article 29(1) of the Convention, which provides for the jurisdiction of the International Court of Justice for the settlement of disputes arising out of the Convention.[4] Reservations to article 29(1) are permitted by article 29(2) of the Convention and thus there is no question as to their admissibility. A significant number of reservations are, however, substantive

and, as one commentator has suggested, go "to the heart of both values of universality and integrity"[5] in international human rights law generally and in its application to women, in particular.

5. The majority of reservations have been made to individual articles, but a minority are general and do not refer to specific provisions of the Convention. Examples of general reservations include those of Malaysia, Maldives and Tunisia. Malaysia's reservation indicates that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic shariah and the Federal Constitution of Malaysia. Maldives makes clear that the Government of Maldives will comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic shariah, upon which the laws and traditions of Maldives are founded, and that it does not see itself bound by any provision of the Convention which obliges it to change its Constitution and laws in any manner. Tunisia has filed a "general declaration" stating that it will not take any organizational or legislative decision in conformity with the requirements of the Convention where such a decision would conflict with provisions of chapter 1 of the Tunisian Constitution. The first article of that chapter of the Constitution declares Islam to be the official religion of the State. A similar reservation, framed as a general declaration, has been filed by Pakistan, which states that its accession is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.

6. Commentators have stressed the significance of the first five articles to the fulfilment of the Convention's objectives. Nonetheless, a significant number of reservations and declarations have been made to these articles. A number of States parties have differently phrased reservations to these provisions to the effect that the Convention is not binding insofar as its provisions may conflict with the Islamic shariah or that the State party is willing to comply with the Convention, provided that such compliance will not be in contradistinction to the Islamic shariah.[6] These reservations have been viewed by some as imprecise and indeterminate and thereby contrary to the certainty required for the acceptance of a clear legal obligation.[7] The terms of the reservations sometimes do not explain their legal and practical scope. This is rendered more complicated by differing views among Islamic scholars as to the precise requirements of the shariah and whether the shariah may be subject to evolving interpretation and practice.

A. Articles 1-5

7. Reservations to articles 1-5 are not all framed in terms of Islamic law. A number of States parties have entered reservations which provide that their domestic law prevails over these and other articles. For example, Algeria states that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code. The Bahamas has entered an unexplained reservation to article 2(a). Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relating to succession to chieftainship and that none of the obligations in the Convention, particularly those in article 2(e), will be treated as extending to the affairs

of religious denominations. New Zealand defers to traditional customs within the Cook Islands by reserving articles 2(f) and 5(a) "to the extent that the customs governing the inheritance of certain Cook Islands chief titles may be inconsistent with those provisions". India declares that it will apply article 5(a) in conformity with its policy of non-interference with the personal affairs of any community without its initiative and consent, while Fiji has filed an unexplained reservation to article 5(a).

B. Article 7

8. Several States parties have made reservations to article 7, explaining these reservations variously. Malaysia has entered a reservation on the basis of Islamic Law and its Constitution, which it does not expand. Austria and Germany have limited their reservation to women's participation in the defence forces; Belgium, Luxembourg and Spain, to the royal prerogative; Israel, to the participation of women as judges in religious courts; and Kuwait, to equality in franchise.

C. Article 9

9. A significant number of reservations have been entered to article 9 of the Convention, which obliges States parties to grant women equal rights with men in relation to their nationality and that of their children.[8] Commentators suggest that these reservations demonstrate deep-rooted assumptions about the appropriate role of women in society, with children born in marriage assumed to acquire the nationality of their father and married women that of their husband. Conversely, husbands do not acquire the nationality of their wives.[9] These reservations not only entrench women's inequality with men in this sphere, but create significant practical disadvantages for them where residence and immigration status are concerned.

D. Articles 11-14

10. A small number of States parties have entered reservations to specific parts of articles 11-14. Reservations to article 11, providing for equality in employment, are drawn narrowly, but nonetheless may rest on stereotypical assumptions. Examples here are reservations, such as those of Austria, relating to night work and others entrenching special protection for working women.[10] Some States parties have entered reservations to articles which oblige the introduction of equality in social benefits. These include Australia, which has made a reservation with regard to article 11(2)(b) on the basis that it is not at present in a position to introduce maternity leave with pay or comparable social benefits throughout the country, and Malta, which, in its reservation to article 13, has preserved its tax legislation which deems, in certain contexts, the income of a married woman to be that of her husband and the husband as head of household for the purposes of social security legislation. Other States parties that have entered reservations to article 13 include Bangladesh, which does not explain its reservation, and Ireland, which indicated that although legislation to ensure equality in services provided by non-governmental actors

was under consideration, it reserved the right, in the meantime, to apply its existing law and measures in that context. Narrow reservations have also been entered by France to article 14(2) (c) and (h), concerning specific measures for rural women.

E. Article 15

11. Article 15, providing that women will be accorded equality with men before the law and in personal movement, choice of residence and domicile, is subject to a number of reservations. Insofar as equality before the law is concerned, Malta's reservation to articles 13, 15 and 16 indicates that it is removing all discriminatory aspects of property law but that in the period of transition it will apply extant discriminatory laws.[11] Jordan has explained that a woman's residence and domicile are with her husband, while Algeria, Morocco, Tunisia and Turkey accept the article subject to the relevant provisions of their personal status codes.[12]

F. Article 16

12. A large number of States parties have entered reservations to article 16, which guarantees equality between women and men in marriage and family life,[13] either in part or in its entirety. Commentators have been particularly critical of these reservations, suggesting that they manifest rejection of the extension of human rights protection into the private sphere and entrench an inferior role for women in domestic life.[14] Controversy surrounded the drafting of article 16 during the preparation of the Convention, with States attempting, even in the discussions in the Third Committee of the General Assembly, to amend the draft Convention to conform with their domestic law.[15] Reservations and declarations to this article are diverse. A number are imprecise and offer no explanation.[16] Others are explicit and explain why the State party has made the reservation. Some States parties, whose reservations are based on the Islamic shariah, argue that women are in fact advantaged by the domestic regime. For example, Iraq has indicated that its reservation is based on the view that the shariah accords women rights equivalent to those of their spouses so as to ensure a just balance between them. Similar, but more detailed, explanations, are offered by the reservations of Egypt and Morocco. Reservations to article 16 have attracted the particular concern of the Committee on the Elimination of Discrimination against Women which, in general recommendation 21, relating to equality in marriage and family relations,[17] expressed alarm at the number and scope of reservations to article 16, particularly in those cases where the State party has also entered reservations with respect to article 2. The Committee has urged States parties to discourage any notions of inequality between women and men which are affirmed by law, or by religious or private law or custom, and has encouraged them to progress towards a stage where reservations to article 16 could be removed.

III. RESPONSES TO RESERVATIONS TO THE CONVENTION

13. The Vienna Convention on the Law of Treaties 1969 prohibits reservations which are incompatible with the object and purpose of a particular treaty. Article 28(2) of the Convention on the Elimination of All Forms of Discrimination against Women reiterates the Vienna Convention and prohibits reservations which are incompatible with its own object and purpose. Despite the prohibition of such reservations, there is no explicit mechanism, beyond the mechanism of objections by other States parties, in the Vienna Convention or in the Convention on discrimination against women itself by which a reservation can be adjudged incompatible with the Convention, and the Convention does not spell out the consequences of an incompatible reservation or an objection to such a reservation.[18]

14. Although there is no formal external or internal mechanism to determine the compatibility of reservations to the Convention, responses to these reservations by States parties to the Convention, the international community generally and others suggest that a significant number of extant reservations are incompatible with the Convention's object and purpose and thus contrary to article 28(2).

A. Response of other States parties

15. A number of States parties to the Convention have exercised the option available under the Vienna Convention on the Law of Treaties and objected to the reservations of other States. Of these, Germany, Finland, Mexico, the Netherlands, Norway, Portugal and Sweden have argued that the wide and often vague and indeterminate reservations of particularly those States which make reservations on the basis of religious law are incompatible with the object and purpose of the Convention and thus contrary to article 28(2). In all cases, objecting States parties have made clear that their objections should not be interpreted as impeding the entry into force of the Convention between themselves and the reserving party.

16. The question of reservations has also been discussed by the meeting of States parties to the Convention. The third meeting of States parties adopted a resolution (CEDAW/SP/8) urging full respect for article 28(2) of the Convention and requesting the Secretary-General to seek States parties' views on reservations that would be considered to come within this article and to report those views to the General Assembly at the following session. It also placed the issue on the agenda of the fourth meeting of States parties, which was to convene in 1988. Seventeen States responded to the Secretary-General's request for views, less than 20 per cent of the then States parties.[19] The report of the Secretary-General[20] was considered by the Third Committee of the General Assembly at its forty-first session in 1986, when a number of States parties that had entered reservations alleged that the debate represented both cultural insensitivity and interference with the sovereign right of States to enter reservations. The General Assembly subsequently adopted resolution 41/108, of 4 December 1986, in which it made no specific reference to reservations, but "recalled the decision of the States parties" and "emphasized the importance of strictest compliance with their obligations under the Convention".

B. Response of the Committee

17. The Committee on the Elimination of Discrimination against Women has been preoccupied with the issue of reservations since its inception. At the third session of the Committee, the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat provided a legal opinion in which it indicated that neither the Committee nor the Secretary-General, as depository of the treaty, had the power to determine the compatibility of reservations,[21] but the question has been an item of discussion for the Committee at many of its sessions. During its sixth session in 1987, the Committee formulated general recommendation 4, which expresses concern at the significant number of reservations that appear to be incompatible with the object and purpose of the Convention, welcomes the decision of the States parties to consider the issue during their meeting in 1988, and suggests that all States parties concerned reconsider reservations with a view to withdrawing them.[22] In 1988, the Committee suggested that, given the references by States parties to Islamic law and practices in their reservations, it would be useful for the Committee to have material on the subject.[23] The Committee has continued to question States closely on the issue of their reservations,[24] encouraging them to review and amend their laws and policies in compliance with the Convention so as to allow for withdrawal of the reservations. In 1992, the Committee formulated a further general recommendation concerning reservations.[25] This general recommendation, No. 20, suggested that States parties should, in their preparation for the 1993 United Nations World Conference on Human Rights, raise the question of the validity and legal effect of reservations to the Convention in the context of reservations to other human rights treaties, reconsider such reservations with a view to strengthening the implementation of all human rights treaties, and consider introducing a procedure on reservations to the Convention comparable with that of other human rights treaties.

C. Revised reporting guidelines

18. At its meeting in 1994, building on paragraph 39 of the Vienna Declaration and Programme of Action, the final document of the World Conference on Human Rights, which encouraged ways and means of addressing the particularly large number of reservations to the Convention and the continued review by the Committee of those reservations, as well as urging States to withdraw reservations that were contrary to the object and purpose of the Convention or which were otherwise incompatible with international treaty law,[26] the Committee amended its guidelines for the preparation of initial and periodic reports required by article 18 of the Convention to include guidance for States that had entered reservations.

19. The new guidelines require States parties to report specifically with regard to their reservations, why they consider them to be necessary, their precise effect on national law and policy and whether they have entered similar reservations to other human rights treaties that guarantee similar rights. States parties are also required to describe plans that they might have to limit the effect of the reservations or withdraw them and, where possible, specify a timetable for this process. Particular reference was made to those States parties which have entered general reservations or reservations to articles 2

and 3, thereby suggesting that the Committee considers such reservations to be incompatible with the object and purpose of the Convention and requiring a special effort towards withdrawal or modification. States parties with such reservations are directed to report on the effect and interpretation of their reservations. The Committee also requested that a special letter be sent by the Secretary-General to those States parties that had entered substantive reservations to the Convention and recommended that the programme of advisory services of the Centre for Human Rights and the Division for the Advancement of Women be available to provide advice to States parties on the withdrawal of reservations.

D. Beijing Declaration and Platform for Action

20. The Committee's concern with reservations to the Convention was echoed by the international community at the Fourth World Conference on Women, which agreed in the Beijing Platform for Action that Governments should limit the extent of any reservations to the Convention, formulate any such reservations as precisely and narrowly as possible, ensure that no reservations were incompatible with the object and purpose of the Convention or international treaty law and review reservations regularly with a view to their withdrawal.[27]

E. Response of scholars and non-governmental organizations

21. Reservations to the Convention have not only attracted the interest of States parties to the Convention, the Committee and other parts of the United Nations system, but also that of scholars and non-governmental organizations. At least four scholars have commented on the reservations, classifying those which they see as impermissible as contrary to the object and purpose of the Convention and suggesting strategies to confront them.[28]

IV. RESPONSE OF OTHER HUMAN RIGHTS TREATY BODIES TO RESERVATIONS

22. The issue of reservations is also a concern of other human rights treaty bodies, with the fifth meeting of Chairpersons of Human Rights Treaty Bodies in 1994 recommending that the treaty bodies should require States parties to explain their reservations. At that meeting it was also recommended that treaty bodies should clearly state that certain reservations were incompatible with treaty law.[29]

23. The absence of specific provisions for dealing with reservations in a number of human rights treaties, and the failure of the Vienna Convention on the Law of Treaties to specify the legal consequences of an impermissible reservation, led the Human Rights Committee, the treaty body established under the International Covenant on Civil and Political Rights, to adopt general comment 24,[30] concerning reservations, in November 1994. In paragraphs 8-11, the comment identifies the principles of international law that apply to the making of reservations and those reservations which the Human Rights Committee regards as contrary to the object and purpose of the Covenant. The Human Rights Committee's classification of reservations contrary to the Covenant's object and

purpose is based on the obligations established in the Covenant, but the comment makes clear (para. 12) that widely formulated reservations which essentially render ineffective all Covenant rights, or which reveal a tendency of States not to want to change a particular law, are often contrary to the object and purpose of the Covenant.

24. General comment 24 also addresses the role of the Human Rights Committee in the context of reservations. The comment suggests that the classic rules on reservations contained in the Vienna Convention on the Law of Treaties are inadequate for the Covenant and other human rights treaties, which, because they concern the rights of individuals and not mutual obligations between States, do not arouse the legal interest of States to lodge objections. In the Committee's view, this has led to few States lodging objections to incompatible reservations as they are entitled to do under the Vienna Convention. The Committee's view (para. 18) is, therefore that:

> "It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because ... it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State's compliance under article 40 [the reporting obligation in the International Covenant on Civil and Political Rights] ... the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task. The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect for the reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation."

25. General comment 24 goes on to make recommendations for States parties for the review of reservations, as well as to States that are not yet parties, but which might be considering ratifying with reservations. It stresses that reservations must be specific and transparent so that the obligations assumed by the ratifying State are clear. Reservations should be precise, rather than general, and States should take into account the overall effect of a group of reservations, as well as the effect of each reservation on the integrity of the treaty. Multiple reservations resulting in the acceptance of a limited obligation should be avoided and reservations should not be framed so as to reduce the obligations assumed to less demanding standards of domestic law (para. 19).

26. Strategies to address extant reservations are also proposed in the comment. States are asked to institute procedures to ensure that each reservation is compatible with the object and purpose of the treaty and States entering reservations should indicate in precise terms the domestic legislation or practices which it considers incompatible with the reserved provision,

delineating a time period required to adjust its domestic laws and practices to conform with the obligation or indicating why it cannot render its domestic laws and practices compatible with the treaty. Reservations should be periodically reviewed, particularly in the light of the Committee's examination of periodic reports, which should include information regarding action that has been taken to review, reconsider and withdraw reservations. Withdrawal of reservations should occur as early as possible.

27. Some aspects of the Human Rights Committee's general comment on reservations have proved controversial with a number of States parties to the Covenant. In particular, the view that the Vienna Convention is inappropriate for human rights treaties, as well as the suggestion that the Committee has the power to make a binding pronouncement on the validity of reservations and sever those it determines offensive, have been criticized.[31] It is to be noted, however, that in the context of its work on reservations,[32] the International Law Commission has prepared a draft resolution on reservations to normative multilateral treaties, including human rights treaties, which is expected to be considered by the Commission in 1997.[33] In the draft resolution, the Commission suggests that although the Vienna Convention is fully applicable to reservations to human rights treaties, although these treaties do not explicitly provide for the competence of treaty bodies to determine the validity of reservations, such bodies necessarily have this competence. Taken together, the Human Rights Committee's general comment and the emerging views of the International Law Commission suggest an active role for human rights treaty bodies to determine whether reservations are contrary to the object and purpose of the treaty under consideration.

V. OPTIONS FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN WITH REGARD TO RESERVATIONS

28. A former expert on the Human Rights Committee, and now a judge of the International Court of Justice, has stated that at the heart of the issue of reservations is "the balance to be struck between the legitimate role of States to protect their sovereign interests and the legitimate role of the treaty bodies to promote the effective guarantee of human rights".[34] Where the Committee on the Elimination of Discrimination against Women is concerned, the issue raises the question of how best to preserve the integrity of the Convention and the obligations that it establishes, while at the same time encouraging the widest participation in the treaty. A related question is how far even far-reaching reservations should be tolerated so as to encourage States parties with such reservations to subscribe to the aims of the Convention and, through the reporting process, gradually to remove their reservations.

29. While stress has been placed by the Committee on the Elimination of Discrimination against Women and others on the many substantive and far-reaching reservations to the Convention, less attention has been paid to the fact that an impressive number of reservations entered by States parties at accession or ratification have been modified or removed entirely. Indeed, although the number and reach of reservations to the Convention are second only to those for the Convention on the Rights of the Child, more reservations to it have been removed than in the case of any other human rights treaty.[35] For example, Malawi

withdrew its general reservation in 1990 and far-reaching reservations relating to articles 15 and 16 were withdrawn by Brazil. In 1996, the United Kingdom of Great Britain and Northern Ireland withdrew most of its numerous reservations which it had made at the time of ratification in 1981. Significantly, Libyan Arab Jamahiriya modified its general reservation which subsumed its accession to the laws on personal status derived from the Islamic shariah. The modified reservation is specific and indicates that Libya intends to implement article 2 of the Convention in the light of the "peremptory norms" of the Islamic shariah relating to inheritance and article 16(1) (c) and (d) without prejudice to any of the rights guaranteed to women by the Islamic shariah. Modification of Libya's reservation occurred after it had presented its first report due under the terms of the Convention, at which time Libya's representative and members of the Committee discussed its earlier reservation in some detail, exploring ways in which it could be drawn more precisely.

A. Monitoring the Committee's general recommendation 20

30. This pattern of modification and withdrawal of reservations suggests that it is important for the Committee to continue its constructive approach to the issue of reservations. The Committee should, for example, continue to monitor closely the impact of general recommendation 20, particularly that part of the recommendation that suggests review by the Committee of States parties' reservations with a view to encouraging States to modify or withdraw them. Monitoring of the effect of the guidelines for reporting introduced in 1994 should also continue to be a priority for the Committee. Such monitoring could include assessment of whether States parties have followed the guidelines and if compliance with the guidelines has resulted in modification of reservations. The Committee might regularly assess the impact of its general recommendations and expanded reporting guidelines on reservations and declarations to the treaty. The Committee may wish to ask a State party for detailed explanation for its maintenance of certain reservations, as well as the effect such reservations have on the enjoyment by women of their human rights in that country.

B. Constructive dialogue with States parties on reservations

31. An important component of the Committee's dialogue with reserving States parties is a comparative discussion of States parties' approach to obligations in other human rights treaties that are similar to those in the Convention. Articles 2, 9, 15 and 16 of the Convention are subject to the largest number of far-reaching reservations, many of which may be defined as contrary to article 28(2). A number of other human rights treaties elaborate obligations which are similar to articles 2, 9, 15 and 16. Articles 2(1) and 3 of the International Covenant on Civil and Political Rights, articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights,[36] and article 2 of the Convention on the Rights of the Child[37] create similar obligations to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Articles 12, 14, 16 and 26 of the International Covenant on Civil and Political Rights create similar obligations to article 15 of the Convention. Again, similar obligations to article 16 of the Convention are to

be found in article 23 of the International Covenant on Civil and Political Rights.

32. During its dialogue with individual States parties, the Committee on the Elimination of Discrimination against Women may wish to draw attention to the fact that a State party may have ratified the Convention with reservations, but at the same time, may have ratified other treaties, such as the Covenants, without reservations to articles 2 and 3 of those treaties. In the event the State party has ratified the Covenants with reservations, the Committee should be in a position to compare the reach of those reservations with the reservations to the Convention and suggest that inconsistencies be eliminated.

33. A sample comparison of reservations indicates that Algeria has not entered reservations to the Convention on the Rights of the Child, but has indicated, in regard to the International Covenant on Civil and Political Rights, that it reserves with regard to the rights and responsibility of spouses. The Bahamas, State party to both Covenants, reserved only with regard to article 2 of the Convention on the Rights of the Child. In this reservation it reserves the right to apply its own Constitution insofar as the conferment of citizenship on children is concerned. Bangladesh is not State party to either Covenant and filed no reservations to the non-discrimination provision on the Convention on the Rights of the Child, a position which appears to be inconsistent with its reservations relating to the Convention on discrimination against women. Belgium's reservations to this Convention are echoed in its reservations to the International Covenant on Civil and Political Rights. Egypt, State party to both international covenants and the Convention on the Rights of the Child, has entered no reservations to the equality guarantees of these treaties, although, as pointed out earlier, it has reserved to articles 2, 9(2) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. Iraq, similarly State party to the Covenants and the Convention on the Rights of the Child, entered no reservations to the equality provisions of these treaties, although maintaining substantial reservations to the Convention on the Elimination of All Forms of Discrimination against Women. Jordan, Libya, Morocco and Tunisia, also States parties to the Covenants and the Convention on the Rights of the Child, have not replicated their reservations to the Convention on the Elimination of All Forms of Discrimination against Women where these other treaties are concerned. In contrast, Malaysia and Maldives entered consistent reservations to that Convention and the Convention on the Rights of the Child.

34. The Committee on the Elimination of Discrimination against Women could enter into a fruitful discussion with States parties which maintain inconsistent reservations and should encourage the other treaty bodies to raise these issues also. The United Nations system, and especially the Division for the Advancement of Women, as the secretariat to the Committee, and non-governmental organizations, should also focus on these inconsistencies in their work with States parties.

C. Coordinated strategies to address reservations

35. The Committee should continue to urge the Division for the Advancement of Women and the Centre for Human Rights to develop cooperative and coordinated strategies to address reservations. Such strategies might include cooperative seminars and training sessions in States parties. The approach of the United Nations Children's Fund (UNICEF) to reservations to the Convention on the Rights of the Child might also be considered and emulated. UNICEF has arranged briefings for and discussions with high-level officials in States considering ratifying the Convention on the Rights of the Child with reservations, and those that have ratified with reservations. These briefings and meetings have been fruitful, with ratification without reservation achieved in some cases and the modification and withdrawal of extant reservations in others. The Committee might recommend such a strategy and might, within the framework of existing resources, nominate Committee experts prepared to participate in such briefings and discussions. It might also encourage the Secretariat to initiate high-level briefings, to reissue the letter of the Secretary-General to States parties with reservations and to analyse the results of that letter. The Committee might also encourage non-governmental organizations, at both the international and national levels, to consult with Governments with a view to withdrawal of reservations. Consultations might include studies of religious laws and their complementarity with the Convention. In this context, the Committee might take note of, and encourage, any seminar series, such as that planned by International Women's Rights Action Watch (Asia/Pacific) for South and South-East Asia in 1997, which seeks to compare extant reservations with the domestic legal regime. Studies of this nature frequently reveal that the States party's reservation is drawn more widely or generally than required, as the domestic situation, both legally and in terms of policy, promotes the idea of equality between women and men.[55]

D. A new general recommendation on reservations

36. In the present report the Committee's general recommendations 4 and 20, which focus on reservations, and 21, which addresses reservations to article 16, have already been described. One of the long-term goals of the Committee could be the formulation of a new and comprehensive general recommendation combining the elements of existing general recommendations, as well as the experience resulting from those recommendations and the practice developed under the expanded guidelines on reservations. Such a general recommendation could take into account general comment 24 of the Human Rights Committee and the developing work of the International Law Commission on reservations. The Committee could develop such a general recommendation over a number of sessions, keeping other treaty bodies and the International Law Commission aware of its work and asking for comment from those bodies. As a short-term measure, the Committee may wish to submit any reaction it might have to the Commission's draft resolution on reservations.

VI. CONCLUSION

37. The Committee should continue to encourage other States parties to object to those reservations that are perceived to be contrary to the object and purpose of the Convention. It should also initiate some or all of the approaches proposed in section IV of the present report and maintain contact with other treaty bodies on this important issue through the regular meetings of chairpersons.

Notes

[1] Report of the Committee on the Elimination of Discrimination against Women (Official Records of the General Assembly, Fifty-first Session, Supplement No. 38 (A/51/38)), para. 346.

[2] Vienna Convention on the Law of Treaties 1969 (United Nations, Treaty Series, vol. 1155, No. 18232, p. 331), article 2 (1) (d).

[3] Human Rights Committee, General Comment 24(52): General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (CCPR/C/21/Rev.1/Add.6).

[4] Twenty-nine States parties have reserved with regard to article 29(1).

[5] Rebecca J. Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women", Virginia Journal of International Law, vol. 30 (1990), p. 644.

[6] See, for example, Bangladesh, Egypt, India (although framed as a declaration), Iraq and Morocco.

[7] R. Cook, loc. cit., note 4, and B. Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination against Women", American Journal of International Law, vol. 85 (1991), p. 281; C. Chinkin ("Reservations and objections to the Convention on the Elimination of All Forms of Discrimination against Women" in J. P. Gardner, ed., Human Rights as General Norms and A State's Right to Opt Out (British Institute of International and Comparative Law, 1996), p. 65.

[8] Algeria, Bahamas, Cyprus, Egypt, Fiji, Jordan, Kuwait, Malaysia, Morocco, Republic of Korea, Tunisia and the United Kingdom on behalf of its dependent territories.

[9] Chinkin, loc. cit.; regional and international human rights mechanisms have been quick to condemn discrimination in this sphere: see Abdulaziz, Cabales and Balakandali v. the United Kingdom, European Court of Human Rights, Series A, vol. 94 (1985); Aumeruddy-Cziffra v. Mauritius, No. 35/1978 adopted at the twelfth session of the Human Rights Committee; Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica, International Law Reports, vol. 79 (1984), p. 282. Discrimination in matters of

nationality has also been the subject of litigation at the domestic level: Dow v. Botswana. Law Reports of the Commonwealth (1992), Court of Appeal, Botswana, p. 623.

[10] Malta and Singapore have similar reservations. The reservations of Mauritius to article 11 are unexplained.

[11] Belgium has a similar reservation limited to women in marriages that occurred prior to 14 July 1976.

[12] Reservations to this part of article 16 could be predicted from discussion in the Commission on the Status of Women during the preparation of the Convention at which the representative of Egypt, supported by the representatives of Indonesia and the Islamic Republic of Iran, explained that according to the Holy Quran, the husband must choose the site of the matrimonial home and the wife has the same domicile as her husband.

[13] Bahamas, Bangladesh, Egypt, France, India, Iraq, Ireland, Israel, Jordan, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Malta, Mauritius, Morocco, Republic of Korea, Singapore, Thailand, Tunisia, Turkey and United Kingdom.

[14] Chinkin, loc. cit., p. 76; Cook, loc. cit., p. 703.

[15] See A/C.3/34/SR.70-73. For example, the representative of Morocco argued that the roles of men and women were not "traditional" but had arisen in the deep consciousness of the human race and that to provide for equality for men and women would affect the "psychic and moral balance of children".

[16] Bahamas, Bangladesh, Iraq, Israel, Jordan, Kuwait, Libya, Malaysia, Mauritius, Tunisia and Turkey.

[17] See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38 (A/49/38), chap. I.

[18] This is in contrast to the International Convention on the Elimination of All Forms of Racial Discrimination which, in article 20, provides that a reservation shall be regarded as incompatible or inhibitive if objected to by two thirds of the other States parties to the Convention.

[19] Note Clark's assessment of this response, Clark, loc. cit., pp. 284-287.

[20] See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 45 (A/39/45), vol. II, annex III.

[21] Ibid., Forty-second Session, Supplement No. 38 (A/42/38), para. 579.

[22] Ibid., Forty-third Session, Supplement No. 38 (A/43/38), para. 66.

[23] See, for example, consideration of the reports of France, ibid., Forty-second Session, Supplement No. 38 (A/42/38), para. 393, and the Republic of Korea, ibid., paras. 147 and 154.

[24] See Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38).

[25] Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (A/CONF.157/24 (Part I)), chap. III.

[26] Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20), chap. IV.I, para. 230 (c).

[27] Chinkin, loc. cit.; B. Clark, American Journal of International Law, vol. 85 (1991), p. 281; R. Cook, Virginia Journal of International Law, vol. 30 (1990), p. 643; and L. Lijnzaad, Reservations to Human Rights Treaties: Ratify and Ruin (Dordrecht, the Netherlands, 1995).

[28] See A/49/537.

[29] General comment No. 24 (52) (CCPR/C/21/Rev.1/Add.6).

[30] The United Kingdom of Great Britain and Northern Ireland, the United States of America and France have lodged observations relating to general comment 24(52). Judge Rosalyn Higgins has responded to these criticisms in the preface to H. P. Gardner, op. cit.

[31] Preliminary report of the Special Rapporteur on the law and practice relating to reservations to treaties (A/CN.4/470); second report (A/CN.4/477), bibliography (A/CN.4/478).

[32] Report of the International Law Commission on the work of its forty-eighth session (Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10)), chap. VI, para. 137.

[33] Rosalyn Higgins, preface to H. P. Gardner, ed., op. cit.

[34] Seventeen States parties have withdrawn reservations.

[35] For the texts of the Covenants, see General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

[36] General Assembly resolution 44/25, annex, of 20 November 1989.

[37] This was the case where the Libyan Arab Jamahiriya was involved (see para. 29 above).